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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HENRY WILDS,) No. C 08-03348 CW (PR)
Plaintiff,) ORDER OF SERVICE
v.)
DONALD GINES, et al.,)
Defendants.)
_____)

INTRODUCTION

Plaintiff, a state prisoner, has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging that Defendants were deliberately indifferent to his serious medical needs. Plaintiff also raises state law claims of negligence and medical malpractice.

His motion for leave to proceed in forma pauperis has been granted.

Venue is proper because the events giving rise to the claim are alleged to have occurred at the Correctional Training Facility (CTF), which is located in this judicial district. See 28 U.S.C. § 1391(b).

Plaintiff has since filed an amended complaint stating the same claims mentioned above. In his amended complaint, Plaintiff names the following Defendants: CTF physicians Donald Gines, Narayanswamy Dayalan, Timothy W. Friederichs and Inderjit Grewal; CTF Pharmacist-In-Charge Chris Hilleary; CTF Chief Medical Officer Joseph Chudy; and CTF Nurse Practitioner Jane Doe. Plaintiff seeks monetary damages.

DISCUSSION

I. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. Id. § 1915A(b)(1), (2). Pro se pleadings must be liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

II. Legal Claims

A. Deliberate Indifference Claim

Deliberate indifference to serious medical needs violates the Eighth Amendment's proscription against cruel and unusual punishment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976); McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc); Jones v. Johnson, 781 F.2d 769, 771 (9th Cir. 1986). A determination of "deliberate indifference" involves an examination of two elements: the seriousness of the

1 prisoner's medical need and the nature of the defendant's response
2 to that need. See McGuckin, 974 F.2d at 1059. A "serious" medical
3 need exists if the failure to treat a prisoner's condition could
4 result in further significant injury or the "unnecessary and wanton
5 infliction of pain." Id. (citing Estelle v. Gamble, 429 U.S. at
6 104). A prison official is deliberately indifferent if he or she
7 knows that a prisoner faces a substantial risk of serious harm and
8 disregards that risk by failing to take reasonable steps to abate
9 it. Farmer v. Brennan, 511 U.S. 825, 837 (1994).

10 Plaintiff's allegation that he suffers from severe chronic
11 lower back pain, which has been documented to be lumbar disc
12 disease with scoliosis, supports an inference that he has serious
13 medical needs. Liberally construed, Plaintiff's allegations that
14 CTF medical staff failed to provide adequate medical treatment for
15 his illness -- while he was housed at CTF from 1998 through 2008 --
16 state a cognizable deliberate indifference claim against Defendants
17 Gines, Dayalan, Friederichs, Grewal, Hilleary and Chudy.
18 Accordingly, this claim may proceed against these Defendants.

19 B. Claim Against Doe Defendant

20 Plaintiff identifies CTF Nurse Practitioner Jane Doe whose
21 name he intends to learn through discovery. The use of Doe
22 defendants is not favored in the Ninth Circuit. See Gillespie v.
23 Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). However, where the
24 identity of alleged defendants cannot be known prior to the filing
25 of a complaint the plaintiff should be given an opportunity through
26 discovery to identify them. Id. Failure to afford the plaintiff
27 such an opportunity is error. See Wakefield v. Thompson, 177 F.3d
28 1160, 1163 (9th Cir. 1999). Accordingly, the claims against

1 Defendant Jane Doe are DISMISSED from this action without
2 prejudice. Should Plaintiff learn Defendant Jane Doe's identity
3 through discovery, he may move to file an amended complaint to add
4 her as a named defendant. See Brass v. County of Los Angeles, 328
5 F.3d 1192, 1195-98 (9th Cir. 2003).

6 C. State Law Claims

7 Plaintiff alleges that Defendants' deliberate indifference to
8 his serious medical needs violates various provisions of California
9 constitutional, statutory and tort law. The federal supplemental
10 jurisdiction statute provides that "'district courts shall have
11 supplemental jurisdiction over all other claims that are so related
12 to claims in the action within such original jurisdiction that they
13 form part of the same case or controversy under Article III of the
14 United States Constitution.'" 28 U.S.C. § 1333(a).

15 Plaintiff asserts supplementary state law claims that the
16 actions of Defendants were negligent. Liberally construed,
17 Plaintiff's allegations satisfy the statutory requirement.
18 Accordingly, the Court will exercise supplemental jurisdiction over
19 Plaintiff's state law claims of negligence and medical malpractice.

20
21 CONCLUSION

22 For the foregoing reasons, the Court orders as follows:

23 1. Plaintiff states a cognizable Eighth Amendment claim for
24 deliberate indifference to serious medical needs against Defendants
25 Gines, Dayalan, Friederichs, Grewal, Hilleary and Chudy.

26 2. The claims against Defendant Jane Doe are DISMISSED
27 WITHOUT PREJUDICE.

28 3. The Court will exercise supplemental jurisdiction over

1 Plaintiff's state law claims that the actions of Defendants were
2 negligent.

3 4. The Clerk of the Court shall mail a Notice of Lawsuit and
4 Request for Waiver of Service of Summons, two copies of the Waiver
5 of Service of Summons, a copy of the amended complaint and all
6 attachments thereto (docket no. 4) and a copy of this Order to CTF
7 Physicians/Surgeons Donald Gines, Narayanswamy Dayalan, Timothy W.
8 Friederichs and Inderjit Grewal; CTF Pharmacist-In-Charge Chris
9 Hilleary; CTF Chief Medical Officer Joseph Chudy. The Clerk of the
10 Court shall also mail a copy of the complaint and a copy of this
11 Order to the State Attorney General's Office in San Francisco.
12 Additionally, the Clerk shall mail a copy of this Order to
13 Plaintiff.

14 5. Defendants are cautioned that Rule 4 of the Federal Rules
15 of Civil Procedure requires them to cooperate in saving unnecessary
16 costs of service of the summons and complaint. Pursuant to Rule 4,
17 if Defendants, after being notified of this action and asked by the
18 Court, on behalf of Plaintiff, to waive service of the summons,
19 fail to do so, they will be required to bear the cost of such
20 service unless good cause be shown for their failure to sign and
21 return the waiver form. If service is waived, this action will
22 proceed as if Defendants had been served on the date that the
23 waiver is filed, except that pursuant to Rule 12(a)(1)(B),
24 Defendants will not be required to serve and file an answer before
25 sixty (60) days from the date on which the request for waiver was
26 sent. (This allows a longer time to respond than would be required
27 if formal service of summons is necessary.) Defendants are asked
28 to read the statement set forth at the foot of the waiver form that

1 more completely describes the duties of the parties with regard to
2 waiver of service of the summons. If service is waived after the
3 date provided in the Notice but before Defendants have been
4 personally served, the Answer shall be due sixty (60) days from the
5 date on which the request for waiver was sent or twenty (20) days
6 from the date the waiver form is filed, whichever is later.

7 6. Defendants shall answer the complaint in accordance with
8 the Federal Rules of Civil Procedure. The following briefing
9 schedule shall govern dispositive motions in this action:

10 a. No later than ninety (90) days from the date their
11 answer is due, Defendants shall file a motion for summary judgment
12 or other dispositive motion. The motion shall be supported by
13 adequate factual documentation and shall conform in all respects to
14 Federal Rule of Civil Procedure 56. If Defendants are of the
15 opinion that this case cannot be resolved by summary judgment, they
16 shall so inform the Court prior to the date the summary judgment
17 motion is due. All papers filed with the Court shall be promptly
18 served on Plaintiff.

19 b. Plaintiff's opposition to the dispositive motion
20 shall be filed with the Court and served on Defendants no later
21 than sixty (60) days after the date on which Defendants' motion is
22 filed. The Ninth Circuit has held that the following notice should
23 be given to pro se plaintiffs facing a summary judgment motion:

24 The defendant has made a motion for summary
25 judgment by which they seek to have your case dismissed.
26 A motion for summary judgment under Rule 56 of the
Federal Rules of Civil Procedure will, if granted, end
your case.

27 Rule 56 tells you what you must do in order to
28 oppose a motion for summary judgment. Generally, summary
judgment must be granted when there is no genuine issue

of material fact -- that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted [in favor of the defendants], your case will be dismissed and there will be no trial.

See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc).

Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (party opposing summary judgment must come forward with evidence showing triable issues of material fact on every essential element of his claim). Plaintiff is cautioned that because he bears the burden of proving his allegations in this case, he must be prepared to produce evidence in support of those allegations when he files his opposition to Defendants' dispositive motion. Such evidence may include sworn declarations from himself and other witnesses to the incident, and copies of documents authenticated by sworn declaration. Plaintiff will not be able to avoid summary judgment simply by repeating the allegations of his complaint.

c. If Defendants wish to file a reply brief, they shall do so no later than thirty (30) days after the date Plaintiff's opposition is filed.

d. The motion shall be deemed submitted as of the date

1 the reply brief is due. No hearing will be held on the motion
2 unless the Court so orders at a later date.

3 7. Discovery may be taken in this action in accordance with
4 the Federal Rules of Civil Procedure. Leave of the Court pursuant
5 to Rule 30(a)(2) is hereby granted to Defendants to depose
6 Plaintiff and any other necessary witnesses confined in prison.

7 8. All communications by Plaintiff with the Court must be
8 served on Defendants, or Defendants' counsel once counsel has been
9 designated, by mailing a true copy of the document to Defendants or
10 Defendants' counsel.

11 9. It is Plaintiff's responsibility to prosecute this case.
12 Plaintiff must keep the Court informed of any change of address and
13 must comply with the Court's orders in a timely fashion.

14 10. Extensions of time are not favored, though reasonable
15 extensions will be granted. Any motion for an extension of time
16 must be filed no later than fifteen (15) days prior to the deadline
17 sought to be extended.

18 IT IS SO ORDERED.

19 | DATED: 1/22/10

Claudia Wilken

CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

1
2 UNITED STATES DISTRICT COURT
3 FOR THE
4 NORTHERN DISTRICT OF CALIFORNIA

5 HENRY WILDS et al,

6 Plaintiff,

7 v.

8 DONALD GINES et al,

9 Defendant.

10 Case Number: CV08-03348 CW

11 **CERTIFICATE OF SERVICE**

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on January 22, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
16 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Henry Wilds E-55595
19 208-8-Low
20 CRC State Prison
21 P.O. Box 3535
22 Norca, CA 92860

23 Dated: January 22, 2010

24 Richard W. Wieking, Clerk
25 By: Sheilah Cahill, Deputy Clerk